

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Thomas Kennedy,
Appellant,

v.

Mills County Board of Review,
Appellee.

ORDER

Docket Nos. 12-65-0287 thru 0289

On April 22, 2014, the above-captioned appeals came on for hearing before the Iowa Property Assessment Appeal Board. The appeals were conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Attorney Jordan Glaser of Peters Law Firm, PC in Council Bluffs, Iowa represented Appellant Thomas Kennedy. Attorney Brett Ryan of Watson & Ryan, PLC in Council Bluffs, Iowa represented the Board of Review at hearing. The Appeal Board ruled Exhibits 1-13 offered by the Appellant were excluded because they were both untimely and were requested, but not provided to supplement the initial discovery responses. Board of Review Exhibit A was also excluded as untimely. The Appeal Board now, having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Thomas Kennedy, owner of three contiguous parcels of residential property located in the Pony Creek Development in rural Mills County, Iowa, appeals from the Mills County Board of Review decisions reassessing his property. The appeals on these parcels were consolidated for hearing.

Kennedy protested to the Board of Review on the ground that the properties were assessed for more than the value authorized by law and that there was an error in the assessment under Iowa Code sections 441.37(1)(a)(2) and (4). Kennedy believed the three parcels should be combined for

assessment purposes. His petitions to the Board of Review also sought reduced assessments.

Kennedy's claim of error essentially restates his claim of over-assessment. The Board of Review granted the petitions, in part, and reduced the assessments of all Kennedy's land assessments by 5% in addition to the 25% topography and 50% economic adjustments applied to Parcels 03251-001 and 03251-003-01 applied by the Assessor.

Kennedy then filed his appeals with this Board and claimed the same ground and relief. The following chart provides information on the land portion of each parcel.

Docket	Parcel	Lot	Acres	Assessed Land Value	Board of Review Land Value	Appellant Land Value
12-65-0287	03251-001	22	0.517	\$7,107	\$6,752	not listed
12-65-0288	03251-002	23	0.571	\$23,316	\$22,150	\$10,000
12-65-0289	03251-003-01	24	0.264	\$4,767	\$4,529	not listed

Of the three parcels, only one contains any improvements. Lot 23 is improved by a one-story, manufactured home built in 1980. The dwelling has 2090 square feet of living area, a full, walk-out basement with 1700 square feet of living quarters finish, and a 676 square foot attached garage. The property has a 260 square-foot enclosed breezeway, porch, a concrete patio and wooden deck. The property is of below average construction quality (5+10) and in normal condition. The dwelling was initially assessed for \$125,268, which was unchanged by the Board of Review. After the Board of Review applied the 5% adjustment to the land, the total assessment for Lot 23 was \$147,418.

Appraiser Jeanne McDonald testified on behalf of Kennedy. She is also familiar with each parcel owned by Kennedy and described the features of each. She explained that Lots 22, 23, and 24 are contiguous parcels on a private road in the Pony Creek subdivision. In her opinion, they would all sell together as a unit. All of the parcels are in a flood zone. McDonald testified Lot 22 is a long narrow half-lot of bare ground that has part of the septic for Lot 23. Lot 23 is the main lot situated between the other two. It contains the dwelling, which is located close to the property line. Lot 23 is

fairly level and slopes at the back. She describes Lot 24 as a tiny strip of ground. Neither Lot 22 nor Lot 24 are buildable because of the combined restrictions of septic size requirements, set back rules, easements, creek location, and the fact that Lot 22 already has the a septic field. While her testimony provides descriptions of the properties, it did not provide an opinion of market value.

County Assessor Christina Govig testified that Vanguard completed the 2013 reappraisal for residential properties. Govig reported Lots 22 and Lot 24 are adjusted by 50% for economic obsolescence because of their location. Lot 23 is not adjusted. Govig indicated she would inquire with the Auditor about combining the three parcels for assessment.

This Board recommends that the Assessor explore combining the parcels of the unbuildable lots (Lots 22 & 24) with the bordering improved lot (Lot 23) for the next reassessment as permitted by Iowa Code section 428.7. Section 428.7 provides that “descriptions may be combined for assessment purposes to allow the assessor to value the property as a unit.” *See Sevde v. Bd. of Review of Ames*, 434 N.W.2d 878, 880 (Iowa 1989) (stating that “the assessor [has] some discretion to aggregate separately described tracts for valuation purposes.”).

Conclusions of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct.

§ 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

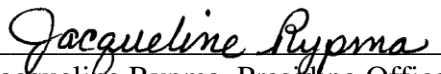
In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

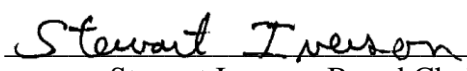
In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

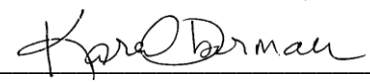
Kennedy presented testimony to show the deficiencies in Lots 22 and 24. However, he did not present any admissible evidence to show the fair market value of any of the three parcels, which is necessary to prevail on his claims. In summary, we determine the preponderance of the evidence does not support Kennedy's claims of over-assessment.

The Appeal Board orders the assessments of the subject properties as determined by the Mills County Board of Review, as of January 1, 2013, are affirmed.

Dated this 15th day of May, 2014.


Jacqueline Rypma, Presiding Officer


Stewart Iverson, Board Chair


Karen Oberman, Board Member

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